IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1244 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHABHAI SHANKARBHAI THAKORE & 2 - Appellant(s)
Versus
MOHANBHAI CHHEDALAL SHARMA & 1 - Defendant(s)

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Appearance :

UNSERVED-EXPIRED (N) for Appellant(s) : 1,MR NN PRAJAPATI for Appellant(s) : 1.2.1 - 3.
NOTICE SERVED for Defendant(s) : 1,
SUNITA S CHATURVEDI for Defendant(s) : 1,
MR MD PANDYA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 07/03/2007

ORAL JUDGMENT

The original claimants have preferred this appeal to challenge the judgment and award of the Motor Accident Claims Tribunal [Aux.] Kheda at

Nadiad, delivered in M.A.C. Petition No. 652 of 1981 dated 22/10/1982, whereby the petition is dismissed.

2. The appellants filed claim petition for obtaining compensation of Rs.25,000/- for the death of a minor girl aged about 8 years, named Kokila. It appears that on 23/3/1981 at about 9.00 a m she was playing near her house situated in village Vishnoli, near bus stand on Nadiad-Petlad road. According to the appellants, at that time Motorcycle bearing Registration No. GJU 948 driven by opponent no. 1 knocked her down. She, therefore, sustained very serious injuries. She was removed to Petlad Hospital where she expired. It was alleged by the appellants that because of the rash and negligent act of respondent no. 1, the accident occurred. They, therefore, preferred the aforesaid claim petition for obtaining compensation of Rs.25,000/-.

2.1. The claim was resisted by respondent no. 1 by filing written statement at Exh. 4 and by respondent no. 2 by adopting the written statement of respondent no. 1 vide Pursis at Exh. 5. It was contended by them that the vehicle in question was never involved in the accident.

2.2. Before the Tribunal, the parties led evidence, oral as well as documentary. On the basis of the material produced before it, the Tribunal arrived at a conclusion that the appellants have failed to prove the fact regarding involvement of the vehicle in question in accident and, therefore, the claim was dismissed. Hence, this appeal.

3. It is submitted by Mr. Prajapati, learned advocate for the appellants that the conclusion of the Tribunal is totally erroneous. According to him, there was cogent and reliable evidence to substantiate the case of the appellants regarding involvement of the vehicle in question and the negligent driving of respondent no. 1. He has further submitted that the appellants deserved to receive the full claim.

3.1. As against that, Miss Maya Desai, learned advocate appearing for respondent no. 2 – Insurance Company has submitted that there is no evidence to establish that the vehicle in question caused the accident. She has submitted that evidence of respondent no. 1 is very clear and reliable as against the evidence of the witnesses examined on behalf of the appellants. She has on the whole supported the judgment of the Tribunal.

4. So far as the appellants are concerned, they have placed reliance on documentary evidence including the FIR given in the case by the father of the deceased girl. It is dated 24/3/1981. In the said FIR the accident is described in detail. The vehicle is described as scooter and its number is given as 948. In the FIR it is also alleged that the vehicle was driven in rash and negligent manner. On the basis of the FIR investigation commenced and panchnama of the scene of offence was drawn. It was drawn on 24/3/1981. The appellants, namely Dahyabhai Shankarbhai and Bhaijibhai Shankarbhai have given evidence before the Tribunal. They have stated that vehicle bearing Registration No. GJU 948 knocked down the girl while she was playing near

the bus stand outside her residence. It is also alleged that the vehicle was driven at a high speed and in negligent manner. The girl was removed to Petlad Government Hospital where she died. In the cross-examination there is some discrepancy with regard to the type of the vehicle i.e., whether it was motorbike or scooter. However, the eye witness to the incident Mafatbhai Dhulabhai, whose evidence is at Exh 23, has stated that it was motorbike and it was bearing Registration No. GJU 948. Thus, it can be seen that the appellants have deposed on the basis of the information received by them and the eye witness Mafatbhai Dhulabhai has clearly stated about the involvement of vehicle bearing Registration No. GJU 948. It is an admitted fact that the said vehicle belonged to respondent no. 1. The accident occurred on 23/3/1981. The FIR is given on the next day. Naturally it is given on the next day because father and other relatives would be busy attending the injured child in the hospital and to secure her medical treatment. But on the very next day, the description as well as the number have been given. This fact gives considerable support to the version of the appellants. It belies the evidence of respondent no. 1 because according to respondent no. 1 he had never gone on the Petlad road on that day because there was some agitation going on. Had that been so, how the appellants could have given the number of his vehicle. Respondent no. 1 is resident of Nadiad; whereas the appellants are residing at village Vishnoli. It, therefore, clearly appears that respondent no. 1 is not telling the truth. When there is oral evidence which is duly supported by the documentary evidence, it

is very strange that Tribunal gave the finding that the appellants have failed to establish the involvement of the vehicle in question in the accident. In my opinion, the said fact adequately stands proved and when it is established by the appellants that the accident occurred due to rash and negligent act of respondent no. 1, causing death of the deceased, they were entitled to receive compensation.

4.1. So far as the quantum of compensation is concerned, she was aged 8 years at the time when death occurred. The appellants have made very moderate claim of Rs.25,000/-. Considering these facts, in my opinion, without entering into the detailed discussion on the quantum of compensation, the entire claim can be allowed. In view of the same, the judgment and award of the Motor Accident Claims Tribunal, Kheda at Nadiad dated 22/10/1982 passed in M.A.C. Petition No. 652 of 1981 are quashed and set aside. The claim is allowed. The vehicle was insured with respondent no. 2 – Insurance Company. The respondents shall, therefore, jointly and severally pay to the appellants a sum of Rs.25,000/- together with interest @ 6% p a from the date of petition till realization with proportionate costs. The appeal is, therefore, allowed.

[Akshay H Mehta, J.]

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